**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.M.JOSEPH**

**THURSDAY, THE 23RD NOVEMBER 2006 / 2ND AGRAHAYANA 1928**

**WP(C).No. 18794 of 2006(K)**
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**PETITIONER:**
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**K.K. BUJJI, SOCIAL SCIENTIST,**
**DEPARTMENT OF COMMUNITY MEDICINE,**
**T.D. MEDICAL COLLEGE, ALAPPUZHA.**

**BY ADV. SMT.T.D.RAJALAKSHMI**

**RESPONDENTS:**
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**1. THE DIRECTOR OF MEDICAL EDUCATION,**
**KERALA, THIRUVANANTHAPURAM.**

**2. MR.D. MADHUSOODHANAN,**
**SOCIAL SCIENTIST, DEPARTMENT OF COMMUNITY**
**MEDICINE, T.D. MEDICAL COLLEGE, ALAPPUZHA.**

**3. SMT.SHAJEELA N.H., LECTURER IN**
**MEDICO SOCIOLOGY, T.D. MEDICAL COLLEGE,**
**ALAPPUZHA.**

**4. M. SINNI, SOCIAL SCIENTIST,**
**C T SCAN CENTRE, MEDICAL COLLEGE HOSPITAL,**
**THIRUVANANTHAPURAM.**

**BY ADV. SRI.DEEPU THANKAN**
**G.P.SMT.M.R.SREELATHA**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**PETITIONER'S EXHIBITS**

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| **EXT.P1** | **TRUE COPY OF THE ORDER NO.F4/12085/97/TDMC OF THE ADMINISTRATIVE OFFICER, T.D.MEDICAL COLLEGE, ALAPPUZHA** |
| **EXT.P2** | **TRUE COPY OF THE ORDER NO.E2/16188/97/DME DTD. 1-12-97 OF THE FIRST RESPONDENT.** |
| **EXT.P3** | **TRUE COPY OF THE REPRESENTATION FILED BEFORE R1. DTD.5-1-98** |
| **EXT.P4** | **TRUE COPY OF THE REPRESENTATION FILED BEFORE R1. DTD.16-2-99** |
| **EX.P5** | **TRUE COPY OF THE REPRESENTATION FILED BEFORE R1 DTD.29-2-00.** |
| **EXT.P6** | **TRUE COPY OF THE ORDER NO.E4/12186/97/TDMC OF THE ADMINISTRATIVE OFFICER, T.D.MEDICAL COLLEGE, ALAPPUZHA** |
| **EXT.P7** | **TRUE COPY OF THE ORDER NO.M2/2832/98/DME DTD. 17-04-01 PASSED BY THE FIRST RESPONDENT.** |
| **EXT.P8** | **TRUE COPY OF THE JUDGMENT IN O.P.NO.19191/02 OF THIS COURT.** |
| **EXT.P9** | **TRUE COPY OF THE REPRESENTATION DTD. 19-04-06 BEFORE THE FIRST RESPONDENT.** |
| **EXT.P10** | **TRUE COPY OF THE ORDER NO.G5/16887/06/DME DTD. 21-06-06 OF THE FIRST RESPONDENT.** |
| **EXT.P11** | **TRUE COPY OF THE ORDER NO.E3/5361/2006/TDMCA PASSED BY THE PRINCIPAL, T.D.MEDICAL COLLEGE, ALAPPUZHA** |
| **EXT.P12** | **TRUE COPY OF GOVERNMENT ORDER NO.(MS)191/90/HFWD.** |
| **EXT.P13** | **TRUE COPY OF THE ORDER NO.H2/12809/06/DME DTD. 23-06-06 OF THE FIRST RESPONDENT.** |
| **EXT.P14** | **TRUE COPY OF THE LETTER DATED 16-08-06 ISSUED BY THE FIRST RESPONDENT.** |
| **EXT.P15** | **TRUE COPY OF THE REPRESENTATION SUBMITTED TO THE SENIOR ADMINISTRATIVE OFFICER, DIRECTOR OF MEDICAL EDUCATION, THIRUVANANTHAPURAM** |
| **EXT.P16** | **TRUE COPY OF THE ORDER NO.H2-12809/06/DME. DATED 19-08-06 OF THE FIRST RESPONDENT.** |
| **EXT.P17** | **TRUE COPY OF THE LETTER DATED 18-05-06 ISSUED BY THE FIRST RESPONDENT.** |

**II ND RESPONDENT'S EXHIBITS**

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| **EXT.R2(A)** | **TRUE COPY OF THE SENIORITY LIST OF SOCIAL SCIENTISTS AS ON 31-12-98.** |
| **EXT.R2(B)** | **TRUE COPY OF THE DPC SELECT LIST DATED 04-07-06.** |

**4TH RESPONDENT'S EXHIBITS**

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| **EXT.R4(A)** | **TRUE COPY OF THE RELEVANT PART OF THE SENIORITY LIST OF GRADE II LAB TECHNICIAN AS ON 31-12-99.** |
| **EXT.R4(B)** | **TRUE COPY OF THE ORDER NO.EN2/9233/97/MCT DTD. 24-04-97.** |
| **EXT.R4(C)** | **TRUE COPY OF THE RELEVANT PART OF THE SENIORITY LIST OF LABORATORY TECHNICIAN UPTO 1-1-95.** |
| **EXT.R4(D)** | **TRUE COPY OF THE REPRESENTATION FILED BY FOURTH RESPONDENT BEFORE THE FIRST RESPONDENT.** |
| **EXT.R4(E)** | **TRUE COPY OF THE OBJECTION FILED BY FOURTH RESPONDENT.** |
| **EXT.R4(F)** | **TRUE COPY OF THE REPRESENTATION FILED BY FOURTH RESPONDENT BEFORE THE FIRST RESPONDENT.** |
| **EXT.R4(G)** | **TRUE COPY OF THE SENIORITY LIST OF SOCIAL SCIENTIST** |
| **EXT.R4(H)** | **TRUE COPY OF THE G.O.(MS)NO.94/92/H&FWD DTD. 6-07-92.** |
| **EXT.R4(I)** | **TRUE COPY OF THE ORDER NO.H1/1932/06/DME DTD.. 7-8-06 ISSUED BY THE FIRST RESPONDENT.** |

**/True copy/**

**PA to Judge.**

**K.M.JOSEPH, J.**

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**W.P.C.No.18794 OF 2006**

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Dated this the 23rd day of November,2006.

**JUDGMENT**

Petitioner challenges Exts.P11 and P13. She also seeks a direction to the first respondent to promote her either in the post of Lecturer in Medico Sociology at T.D.Medical College, Alappuzha or as Lecturer in Health Education at Medical College, Kozhikode. The short case of the petitioner is as follows. Petitioner was appointed EEG Technician Grade II in the Medical College Hospital, Alappuzha. By Ext.P1 order she was appointed as Social Scientist on 25-09-1997. She got promotion to the post of EEG Technician Grade I subsequent to her appointment as Social Scientist. According to her she is entitled to get promotion on 25-08-1993 in Grade I in the higher scale of pay. But she was actually granted promotion vide Ext.P2 only on 01-12-1997. According to her there should have been three Grade I EEG Technician and four Grade II EEG Technicians. According to her she was eligible for promotion from May 1994 when she acquired additional qualification of M.A. in Sociology. She filed Ext.P3 representation followed by further representations. By Ext.P6

order dated 14-07-1998 her pay scale was fixed in Grade I scale of Rs. 1350-2000 with effect from 25-05-1993. But in view of the fact that she was promoted as Social Scientist on the scale of 1520-2300, no seniority was given to her even though financial benefits were given. Petitioner filed O.P.No.33762/2000 which was disposed of. By Ext.P7 order, first respondent rejected her claim. Petitioner again approached this court by filing O.P.No.19191/2001, which was disposed of by Ext.P8 judgment. In Ext.P8 judgment this court held as follows:

> "The reason for rejecting the request of the petitioner is that orders also will claim the seniority. There is no counter affidavit by the State. In case the petitioner is otherwise eligible to have the seniority duly fixed, the same cannot be denied on the only ground that others will also claim the same. I quash Ext.P7. There will be a direction to the first respondent to consider the matter afresh with notice to the petitioner and respondents 2 to 4 and pass orders on merits. The needful shall be done within a period of two months from the date of production of a copy of this judgment."

2. Petitioner filed Ext.P9 representation. By Ext.P11, the third respondent came to be promoted as Lecturer in Medico Sociology. Ext.P12 is produced as rules. In Ext.P12 there is a note, which reads as follows:

> " When there are more than one employee in the Medical Education Service willing for promotion

> to the post of Social Scientist the person in the higher scale will be preferred."

3. Thus, as per the same, person in the higher scale has to be preferred for promotion to the post of Social Scientist. Therefore, it is the case of the petitioner that in view of Grade given to the her with effect from 1993 petitioner was eligible to be promoted ahead of respondents 2 and 4. However Ext.P13 order was passed reiterating essentially that if the petitioner's claim is considered other employees also claim seniority when their scale of pay changes.

4. As far as the qualification for the post of lecturer in Medico Sociology is concerned, it is only M.A. in Sociology. As far as the qualification for lecturer in Health Education is concerned, besides M.A. in Sociology, candidate should also possess Diploma in Health Education. As far as petitioner and respondent No.2 are concerned, it is not in dispute that they are qualified to be appointed both as Lecturer in Health Education and lecturer in Medico Sociology. Respondents 3 and 4 do not possess the qualification of Diploma in Health Education and hence they are not eligible for the post of lecturer in Health Education.

5. It is not in dispute that there is a vacancy of Lecturer in

Health Education in the Medical College, Kozhikode. It is also not in dispute that the post of Lecturer in Medico Sociology has already been filled up by appointing respondent No.3. Learned counsel for the petitioner submits that petitioner does not press the challenge against Ext.P11 order. Therefore the writ petition to the extent challenging Ext.P11 shall stand dismissed. The principal question to be considered is the validity of Ext.P13.

6. I heard learned counsel for the petitioner, learned counsel for the respondents and the learned Government Pleader also.

7. Learned Government Pleader submits that she is unable to support the reasoning given in Ext.P13. With regard to Ext.P13, I am of he view that the reasoning given in Ext.P13 for the rejection of the representation of the petitioner is clearly unsustainable. When this court has in Ext.P8 judgment directed that in case petitioner is otherwise eligible to have the seniority duly fixed, the same cannot be denied on the ground that others will also claim the same, it is not open to the Director to give the same reason for rejecting the representation of the petitioner. Hence Ext.P13 cannot be sustained. Accordingly, it is quashed.

8. In the above facts and circumstances, the writ petition is disposed of directing the first respondent to re-consider the

matter afresh after giving notice to the petitioner and respondent 2 and 4 within a period of one month from the date of production of a copy of this judgment. It is made clear that the claim of the petitioner for seniority should not be denied for the reason that others will also claim seniority. If the first respondent on consideration of the matter finds that the seniority of the petitioner is to be revised, petitioner will be entitled to all consequential benefits.

9. Interim order passed by this court will continue till a decision is taken by the first respondent.

Writ petition is disposed of as above.

**K.M.JOSEPH.**
**JUDGE.**

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